IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 306 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHHOGAJI VAGHAJI PRAJAPATI

Versus

MOHANSINH U.BHATI

Appearance:

MR MS SHAH for SURESH M SHAH for Petitioner

MR BP GUPTA for Respondent No. 1

MR SP DAVE for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/05/2000

ORAL JUDGEMENT

Heard the learned advocates.

This Revision under section 397 CRPC read with section 401 CRPC arises of the order dated 6th July,

1994, made by the learned Metropolitan Magistrate, Court No. 20, Ahmedabad, discharging the accused under section 245 (2) CRPC.

The petitioner before this court is the complainant. On 15th February, 1992, the complainant lodged a complaint before the learned Metropolitan Magistrate, being Criminal Case No. 90/93. The complainant alleged that the accused-respondent no.1 was a building contractor and the complainant had agreed to purchase two shops from him, for which he had made a payment of Rs. 1,80,000/-. The said building was found to be constructed unauthorisedly and was demolished by the Municipal Corporation. Thereupon the accused promised the re-payment of the amount paid by the complainant. In partial discharge of the said liability, the accused gave a cheque for the sum of Rs.80,000/- in favour of the complainant. However, on presentation of the said cheque, the Bank dis-honoured the same for 'want of sufficient funds'. Thereupon the complainant gave a notice to the accused as contemplated under section 138 of the Negotiable Instruments Act, 1881. Inspite of the said notice, the accused failed to discharge his liability. Therefore, the complaint. Upon presentation of the complaint, on 15th February, 1993, the learned Magistrate ordered to issue summons and made it returnable on 5th March, 1993. Pursuant to the said summons, the accused presented himself before the learned Magistrate, and on 19th April, 1994, gave an application Ex.2 for discharge under section 245 (2) CRPC. It was contended that the accused was a Medical Practitioner and was not pursuing the business of building contractor. The cheque in question was not issued by him. He, therefore, should be discharged as aforesaid. The learned Magistrate after hearing the accused and the complainant, allowed the said application vide the impugned order dated 6th July, 1994, and ordered to discharge the accused. Feeling aggrieved, the complainant has preferred the present Revision.

Mr. Shah has submitted that the order made by the learned Magistrate is without the authority of law in as much as no order of discharge under section 245 (2) CRPC could have been made without recording the evidence as envisaged under section 244 CRPC. In the present case, no evidence whatsoever was recorded by the learned Magistrate. The power conferred under section 245 (2) CRPC, therefore, could not have been exercised by the learned Magistrate. In support of his argument, Mr. Shah has relied upon the judgment of this court in the matter of PRAVINKUMAR MANILAL MEHTA VS JYOTINDRA M.

BHATT (1989 {1} GLR, 523). In the said judgment, this court has discussed the scope and ambit of sections 244, 245 and 246 CRPC. The court in paragraph-5 of the said judgment, has held that - " Thus, under section 245 of the Code, the court has two alternatives to follow; it may take all the evidence and then decide whether the accused should be discharged or not, or it may not complete recording of all the evidence and discharge the accused at any previous stage of the case. Obviously, the words 'at any previous stage of the case' in sub-section (2) of section 245 can not mean any stage previous to the position contemplated by sub-section (1). If the said words are interpreted to mean that it can be any stage previous to the stage contemplated by sub-section (2) of section 245 and section 244 of the Code. Therefore, the words 'at any previous stage of the case', in the context in which they are used will have to be interpreted to mean any stage before recording of all the evidence or conclusion of the entire evidence. The scheme of the sections does not permit the Magistrate to discharge the accused before any evidence contemplated by section 244 is recorded ". While considering the meaning of the words 'at any previous stage of the case' occurring in sections 245 and 246 CRPC, the court, in paragraph-7 of the said judgment, held that - " It stands to reason that those words and similar words used in section 245 should be given the same meaning. If the words 'at any previous stage of the case' occurring in section 245 and 246 of the Code are interpreted to mean the stage where the accused appears before the court and no evidence as contemplated by section 244 is recorded, then that would induce the prosecution not to produce any evidence in all the cases before the charge is framed. That would also enable the accused to urge that he should be discharged even at that stage and no charge should be framed against him. That could not have been the object of the Legislature because following such a procedure would be prejudicial to both the prosecution and the accused ..... It would mean the stage when some evidence produced by the prosecution has been recorded. Such an interpretation would be in consonance with the object of these provisions viz. balancing the interests of the prosecution and the accused ".

In the present case, the learned Magistrate has invoked the provisions contained in section 245 (2) CRPC without recording any evidence whatsoever. This is exactly what has been held by this court, the learned Magistrate can not do. Before the learned Magistrate could invoke the provisions of section 245 (2) CRPC, he was duty bound to record evidence as contemplated by

section 244 CRPC. This having not been done, the impugned order of discharge is bad and illegal and requires to be quashed and set aside.

In the result, Revision succeeds. The impugned order of discharge dated 6th July, 1994, made in Criminal Case No. 90/93 is quashed and set aside. The learned Magistrate shall now record the evidence and try the accused in accordance with law. The learned Magistrate may also grant due precedence keeping in view that the complaint was lodged as far back as in the year 1993. Rule is made absolute accordingly.

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JOSHI